ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Interconnection and Resale	)	CC Docket No. 94-54
Obligations Pertaining to	)	
Commercial Mobile Radio Services	)	

To: The Commission

COMMENTS OF BELLSOUTH

BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Cellular Corp. (collectively "BellSouth"), by their attorneys, hereby submit these comments in response to the Commission's *Second Notice of Proposed Rule Making,* FCC 95-149 (Apr. 20, 1995) ("*SNPRM*"), *summarized*, 60 Fed. Reg. 20949 (Apr. 28, 1995) in this docket.

SUMMARY

BellSouth supports the Commission's tentative conclusion that under present market conditions, it is not necessary to impose a general CMRS-to-CMRS interconnection obligation at this time. Moreover, the Commission should refrain from adopting general CMRS roaming policies and should preempt states from regulating CMRS-to-CMRS interconnection.

BellSouth also agrees with the Commission's tentative conclusion that all CMRS licensees should be subject to a resale obligation. However, the Commission should allow licensed CMRS providers to restrict resale by facilities-based competitors once the competitor becomes operational or has been authorized to provide service for three years. Unless such resale is restricted, facilities-based competitors have a disincentive to rapidly build-out their systems, which is contrary to the public interest and the Commission's goal of efficient spectrum use. Finally, BellSouth supports the Commission's rejection of the switched resale proposal.

I. THERE IS NO NEED TO MANDATE CMRS-TO-CMRS INTERCONNECTION

BellSouth supports the Commission's tentative decision not to impose a general CMRS-to-CMRS interconnection obligation. *SNPRM* at ¶ 29. The record does not support such a requirement. *Id.* The Commission has acknowledged that competition brings "greater benefits to customers and society than traditional regulation."[1] Thus, marketplace forces — not government regulation — should be allowed to determine when and on what terms CMRS-to-CMRS interconnection is warranted.[2]

The Commission has previously found no evidence indicating that market conditions "fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory."[3] There is simply no reason at this time to believe that market conditions would be any less effective at preventing discrimination in CMRS interconnection,

---

[1] *Regulatory Treatment of Mobile Services*, Gen. Docket No. 93-252, *Notice of Proposed Rule Making*, 8 FCC Rcd. 7988, 7998 (1993).

[2] *See Regulatory Treatment of Mobile Services*, Gen. Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd. 1411, 1468 (paging is highly competitive), 1469 (SMR providers lack market power), 1469 (air-to-ground service providers are non-dominant), 1478 (cellular is sufficiently competitive to warrant forbearance from Title II regulation); *Hearings on the Federal Communications Commission's Fiscal Year 1995 Before the Subcomm. on Commerce, Justice, State, and the Judiciary of the House Comm. on Appropriations*, 103d Cong., 2nd Sess., 1994 FCC LEXIS 1630, at *7 (Apr. 18, 1994)(Statement of Reed E. Hundt, Chairman, Federal Communications Commission) ("in fulfilling its responsibility to maintain the viability of affordable telephone service, the Commission must ensure that regulatory barriers do not artificially preclude competition"); *Notice*, Separate Statement of Commissioner Andrew C. Barrett at 1 ("[w]here there is no issue of interconnection to bottleneck facilities for transport and switching, then I believe there is a higher burden to justify [interconnection] regulatory requirements between CMRS providers . . . under Title II"); *Louisiana Public Service Commission*, PR Docket 94-107, *Report and Order*, FCC 95-191, at ¶ 11 (May 19, 1995).

[3] *Louisiana Public Service Commission*, PR Docket 94-107, *Report and Order*, FCC 95-191 at ¶¶ 7, 40 (May 19, 1995); *Arizona State Corporate Commission*, PR Docket 94-104, *Report and Order and Order on Reconsideration*, FCC 95-190 at ¶¶ 7, 36, 56 (May 19, 1995); *State of Ohio*, PR Docket 94-109, *Report and Order*, FCC 95-193 at ¶¶ 7, 37-38 (May 19, 1995); *People of the State of California*, PR Docket 94-105, *Report and Order*, FCC 95-195 at ¶¶ 3, 96 (May 19, 1995).

should a market in such interconnection develop. The Commission has previously found that new interconnection obligations should not be imposed when there are existing statutory and regulatory safeguards to prevent discriminatory activities.[4]

The Commission nevertheless seeks, in the *SNPRM,* to analyze CMRS interconnection from the viewpoint of market share in a relevant geographic and product market. BellSouth submits that such an analysis at this point would be counterproductive. There is not, at present, any active market for direct CMRS-to-CMRS interconnection given the availability of such connectivity through the existing local exchange carrier ("LEC"). Further, the Commission notes that very few calls are CMRS-to-CMRS. *SNPRM* at ¶ 30. Although demand for direct CMRS interconnection may develop in the future, it is wholly speculative to attempt to determine the relevant geographic and product markets involved. The availability of call termination through the LEC is a complete and efficient substitute for any direct CMRS interconnection that, hypothetically, might be offered. Such availability will be an effective check on any CMRS operator's market power with respect to CMRS interconnection.

---

[4] *See Eligibility for the Specialized Mobile Radio Services*, GN Docket No. 94-90, *Report and Order*, 77 Rad. Reg. (P&F) 2d 431, ¶ 9 (Mar. 7, 1995) ("*SMR Order*"); *see also id.* at ¶¶ 22-24.

II. THE COMMISSION SHOULD PREEMPT STATE REGULATION OF CMRS-TO-CMRS INTERCONNECTION

The Commission should preempt state regulation of CMRS-to-CMRS interconnection.[5] Separate interconnection requirements in each state would conflict with the Commission's determination that requiring CMRS-to-CMRS interconnection is not in the public interest and with Congressional intent to facilitate the "growth and development of mobile services that . . . operate without regard to state lines."[6]

In PCS, for example, the Commission carefully crafted a regulatory framework to promote the rapid development and deployment of services. Many PCS systems will operate across state lines, either on their own or through cooperative arrangements among PCS licensees. Differing state regulations, regarding the types of interconnection that must be provided by such licensees to other CMRS providers, will inhibit the roll-out of these services.

If states were allowed to regulate CMRS-to-CMRS interconnection as part of their regulation of "other terms and conditions of service,"[7] a carrier who develops a new service or application could not move forward until it is sure that the application will satisfy the interconnection requirements of each state. Congress enacted Section 332 to foster the growth and development of a competitive mobile service industry; state regulation was restricted in order to further the goal of regulatory parity — similar CMRS providers must be regulated alike.[8]

---

5 BellSouth Comments, CC Docket No. 94-54, at 20-22 (Sept. 12, 1994).

6 H.R. Rep. No. 103-111, 103d Cong., 1st Sess. 260 (1993).

7 47 U.S.C. § 332(c)(3).

8 *See* H.R. Rep. No. 103-213, 103d Cong., 1st Sess. 494 (1993).

The Commission has previously held that state regulation of the type of interconnection provided by LECs to cellular carriers should be preempted.[9] BellSouth agrees with this conclusion and submits that it would be contradictory for the Commission to preempt LEC-cellular interconnection and to allow state regulation of the type of interconnection provided by CMRS licensees to other CMRS licensees. Accordingly, state regulation of CMRS-to-CMRS interconnection should be preempted.

III. THERE IS NO NEED TO FORMULATE CMRS ROAMING POLICIES

BellSouth agrees that there is no need at this time to formulate general CMRS roaming policies. *See SNPRM* at ¶ 56. The existing nationwide seamless cellular roaming system developed in response to the demands of the marketplace and developments in technology, largely without any active involvement of the FCC. There is no reason to believe that regulatory action is necessary to encourage the wide availability of roaming service both in other CMRS services and among the different CMRS services, with one exception.

The Commission notes that there is some ambiguity with respect to the interpretation of Section 22.901 regarding cellular systems serving PCS subscribers with dual-mode phones. *SNPRM* at ¶ 57. Section 22.901 provides that a cellular licensee must provide cellular service "to all cellular subscribers, including roamers," when they are in the cellular licensee's service area. BellSouth suggests several issues that should be addressed in connection with this rule. First, some PCS customers may have dual-mode phones, even though they subscribe only to PCS, and not cellular, service. Section 22.901 properly does not impose an obligation on a cellular carrier to provide roaming service to such a customer, because the customer is not a "*cellular* subscriber in good standing" (emphasis added).

---

[9] *See Declaratory Ruling*, 2 FCC Rcd. 2910, 2911 (1987).

The cellular licensee should not be subject to any blanket obligation to provide service to such a customer, because the customer has no contractual relationship with a cellular system operator, and there may be no way for the cellular carrier to ensure payment. Of course, the cellular operator should be *permitted* to provide roaming service to such a customer, if appropriate financial arrangements are made, either through reaching a roaming agreement with the customer's home PCS carrier or by establishing a temporary account for the customer upon a demonstration of creditworthiness.

Second, the public interest would be served best by allowing a Bell Company's PCS system to negotiate roaming agreements that allow their dual-mode subscribers to obtain roaming service from cellular operators. To ensure that such arrangements can develop, the Commission should make clear that a PCS licensee who negotiates a roaming agreement with a cellular carrier for the benefit of its customers is not engaging in the provision of cellular service, but is merely establishing a billing arrangement for a customer's use of the cellular carrier's service.

The Bell Companies are required to provide cellular service through a separate subsidiary, *see* Section 22.903, but their PCS operations need not be structurally separated. If arrangements which permit a PCS subscriber to roam on a cellular system are deemed the "provision" of cellular service, a Bell Company will not be able to enter into roaming arrangements unless a separate subsidiary is used to provide PCS. Thus, although the rules allow Bell Companies to provide PCS directly, Bell Companies will have to create separate subsidiaries in order to enter into roaming agreements necessary to remain competitive. BellSouth does not believe this is an intended result.

IV. RESALE ISSUES

A. All Broadband CMRS Providers Should Be Subject To A Resale Requirement

BellSouth supports the Commission's tentative conclusion that the resale obligation imposed on cellular providers should be extended to all CMRS providers but agrees with PageNet that an exception should be made for paging companies. *SNPRM* at ¶ 83. Paging companies do not compete with broadband CMRS licensees providing SMR, cellular, and PCS services. Paging has never been subject to a resale obligation and, given that paging licensees do not compete with broadband CMRS licensees, regulatory parity does not require that paging licensees be subject to all the same regulations that are placed on broadband SMR licensees. Moreover, there are many paging operators in virtually every market, including both Part 22 licensees and Private Carrier Paging operators. Any spur to competition that resale might be viewed as providing in the cellular context is simply unnecessary in the paging marketplace. Accordingly, BellSouth suggests that there is no reason to extend the cellular resale requirement to paging.

BellSouth urges the Commission, however, to require all broadband CMRS providers to allow resale of their services on the same basis as cellular (*i.e.*, on a non-discriminatory basis). In light of the Congressional mandate to regulate competing CMRS services in a similar manner, there is no justification for exempting certain broadband CMRS services from this requirement, while cellular operators are subject to it. Accordingly, BellSouth opposes requests to exempt SMR licensees from a resale requirement because of technical difficulties or the "high degree of user management" that is required. *See SNPRM* at ¶ 68. By creating an exception for technical differences, the Commission will create new regulatory disparities of the type Congress intended to eliminate by revising Section 332 of the Communications Act.

B. CMRS Providers Should Be Allowed to Restrict Resale of Their Service By Facilities Based Competitors

BellSouth agrees with the Commission's tentative conclusion that there should be a "time limitation on the obligation of one facilities-based CMRS provider to permit another facilities-based CMRS provider to resell its cellular service." *SNPRM* at ¶ 90. BellSouth urges the Commission to allow CMRS providers to restrict resale by a competing facilities-based carrier once the carrier becomes operational, or three years after a license is issued to the competing facilities based provider, if it is not yet operational at that time. As the Commission and the Department of Justice have recognized, the rationale for prohibiting resale restrictions between facilities-based carriers ceases to exist once both carriers are fully operational.[10]

The Commission has also indicated that a new CMRS entrant's interest in reselling must be balanced against the public interest of encouraging the aggressive build-out of new networks. *SNPRM* at 90. In PCS, for example, the Commission indicated that it sought to optimize and balance four factors in establishing PCS: universality; *speed of deployment*; diversity of services; and competitive delivery.[11] According to the Wireless Telecommunications Bureau, speed of deployment was of paramount concern to the Commission in PCS.[12]

Resale gives a new entrant both the opportunity and incentive to delay building out its system. To ensure prompt build-out, the Commission should allow a CMRS licensee to restrict

---

[10] *See SNPRM* at ¶ 90; *Cellular Resale Policies*, CC Docket No. 91-33, *Report and Order*, 7 FCC Rcd. 4006 (1992) (subsequent history omitted).

[11] *See Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, *Second Report and Order*, 8 FCC Rcd. 7700, 7702 (1993) (subsequent history omitted).

[12] *See Order*, DA 95-806 (W.T.B. Apr. 12, 1995).

resale by a facilities-based competitor that is not yet operational, three years after its license is awarded.[13]

A bright-line test is needed to determine who are facilities-based competitors, because radio coverage can change. In particular, PCS licensees do not have individually licensed facilities and there is no single accepted or FCC-established coverage criterion, and ESMRs operate using technology that differs substantially from that used as the basis for SMR licensing, so their coverage cannot readily be ascertained from FCC files. PCS licensees are given a blanket license for a BTA or MTA, and the Commission has proposed a similar MTA-based license for ESMRs. Accordingly, BellSouth suggests that CMRS operators be considered facilities-based competitors when there is any overlap of their FCC-licensed service areas. Thus, a cellular operator and a PCS operator or ESMR would be considered facilities-based competitors if the cellular operator's CGSA and the PCS operator's BTA or MTA (or the ESMR provider's MTA) overlap at all.

BellSouth opposes American Personal Communications' ("APC") proposal to prohibit cellular providers from restricting resale by facilities-based competitors while, at the same time, allowing PCS licensees to restrict such resale. As stated in BellSouth's Reply Comments, this proposal violates the statutory-based policy of regulatory parity espoused by the Commission.[14]

C. The Public Interest Would Not Be Served By Allowing A New Entrant To Resell, Rather Than Construct A Competing System

Allnet asserts that new entrants should be permitted to resell indefinitely rather than construct competing systems. *SNPRM* at ¶ 91. Allnet's argument is without merit. First, if there

---

[13] Although cellular providers were precluded from restricting resale by facilities-based competitors for five years, there were a number of factors that warranted a longer resale period then, which no longer exist. For example, wireless equipment was not readily available when cellular was developing.

[14] BellSouth Reply Comments, CC Docket No. 94-54, at 3-4 (Oct. 13, 1994).

is sufficient demand to warrant additional resellers, there is sufficient demand to warrant additional suppliers. Licenses are awarded via competitive bidding and, thus, if actual or projected demand is lower than when earlier entrants entered the market, a new entrant theoretically will pay less for the license.

Further, by allowing new entrants to resell rather than build competing systems, the public would be deprived of the benefits of infrastructure development. Resale offers limited service differentiation and is merely an arbitrage that exploits the spread between bulk and retail rates. Constructing competing facilities, however, produces differences in actual service, in response to consumer demands. Moreover, the price offered by a reseller includes the cost of any system inefficiencies inherent in an existing provider's system, since it is the underlying carrier's service that is being marked up and resold. By becoming a facilities-based competitor, however, an entity can offer lower prices than a competitor if it can create system efficiencies. This creates a ripple effect — it encourages other competitors to improve their systems so that they are able to reduce prices to their customers.

D. BellSouth Agrees with the FCC's Rejection of Switched Resale

In the *SNPRM*, the Commission tentatively rejected a proposal by cellular resellers to require CMRS providers to offer unbundled access to service components to facilitate switched resale. BellSouth agrees with this conclusion.[15]

CMRS licensees should not be required to restructure their networks to provide resellers with artificially created opportunities for switch-based resale. The advocates of switch-based resale have yet to present any concrete, specific proposals for how switch-based resale would work, both

---

15 *See* Comments of BellSouth, CC Docket 94-54, at 18-19 (Sept. 12, 1994).

technically and financially.[16] Moreover, switch-based resale is not an issue of interconnection so much as a matter of establishing preferential unbundled rates. Creating an opportunity for the development of switch-based resale would require a time-consuming and complex proceeding for the unbundling of CMRS licensees' service into discrete low-level components, together with the development of detailed cost accounting rules and rate regulation policies.[17] The Commission has not adopted such rules or policies for cellular or other CMRS licensees to date, and BellSouth suggests they would be most inappropriate in a competitive industry.[18]

---

[16] *See Investigation on the Commission's Own Motion into the Regulation of Cellular Radiotelephone Utilities*, Investigation No. 88-11-040, Decision No. 92-10-026, 1992 Cal. PUC LEXIS 833 at *41-50 (1992) (*CPUC Phase III Decision*), *rehearing granted in part*, Decision No. 93-05-069, 1993 Cal. PUC LEXIS 412 at * 12 (1993) (*CPUC Phase III Rehearing*).

[17] *See CPUC Phase III Rehearing* at *12; *CPUC Phase III Decision* at *50-65. Despite its determination in these decisions that detailed cost-of-service regulation was needed to deal with the unbundling of services to permit switch-based resale, in the *Wireless OII Interim Decision*, the CPUC decided not to adopt such regulations, and instead required unbundling at market-based rates, upon receipt of a *bona fide* request from a reseller wishing to obtain the interconnections needed for switched resale. *See also Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications*, Investigation No. 93-12-007, Decision No. 94-08-022, Slip Op. at 80-83 (August 3, 1994)(*Wireless OII Interim Decision*).

[18] The California PUC has required cellular carriers to unbundle landline transmission and switching functions from radio transmission service, and is considering requiring similar unbundling for all wireless carriers. In opening its inquiry, it emphasized that such unbundling was intimately related to "costing and pricing issues," and acknowledged its concern "that such unbundling *requires cost-based regulation* and that it may be *incompatible with other regulatory frameworks* from which the Commission might choose." *Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications*, Investigation No. 93-12-007, *Order Instituting Investigation*, 1993 Cal. PUC LEXIS 836 at *41-42 (1993) (*CPUC Wireless OII*) (*emphasis added*). Due to this concern, the California PUC asked about "the advisability of engaging in a process of unbundling if we expect the market to be competitive in the future and whether unbundling requirements are needed in a competitive market." *Id.* at *42. In a recent decision, it decided not to engage in cost-based regulation of cellular carriers and allowed them to set market-based rates for unbundled interconnection services. *Wireless OII Interim Decision* at 80-83.

CONCLUSION

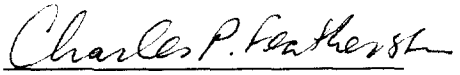
For the foregoing reasons, BellSouth supports the Commission's tentative conclusions that (1) it is not necessary to impose a general CMRS-to-CMRS interconnection obligation at this time, and (2) all CMRS licensees will be subject to a resale obligation. Further, BellSouth urges the Commission to preempt state regulation of CMRS-to-CMRS interconnection. The Commission should also refrain from adopting general roaming policies and should allow CMRS providers to restrict resale by facilities-based competitors.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.
BELLSOUTH CELLULAR CORP.

By: 
William B. Barfield
Jim O. Llewellyn

1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610
(404) 249-4445

By: 
Charles P. Featherstun
David G. Richards

1133 21st Street, N.W., Suite 900
Washington, D.C. 20036
(202) 463-4132

Their Attorneys

June 14, 1995